



## EPA Policy on Deletion and Deferral of Sites from the CERCLA National Priorities List (NPL)

- BACKGROUND:** This Information Brief provides an overview of the EPA policies and practices describing deletion, partial deletion, and deferral of sites from the National Priorities List (NPL).
- STATUTES:** Comprehensive Environmental Response, Compensation, and Liability Act, Section 105 (National Priorities List) and Section 120 (Federal Sites).
- REGULATIONS:** 40 CFR 300.425 of the National Contingency Plan (NCP)
- REFERENCES:**
1. "Final Rule: National Priorities List for Uncontrolled Hazardous Waste Sites," U.S. Environmental Protection Agency, 63 FR 40182, July 28, 1998.
  2. "Notice of Partial Deletion of the Hanford 100-Area (USDOE) Superfund Site from the National Priorities List," 63 FR 36861, July 8, 1998.
  3. "Notice of Intent to Delete Operable Units 100-IU-1 and 100-IU-3 of the Hanford 100 Area Superfund Site from the National Priorities List," U.S. Environmental Protection Agency, 63 FR 28317, May 22, 1998.
  4. "Notice of Interim Final Policy Statement: The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing and Deletion Policy for Federal Facilities," U.S. Environmental Protection Agency, 62 FR 62523, November 24, 1997.
  5. "Procedures for Partial Deletions at NPL Sites," Memorandum from the Director, Office of Solid Waste and Emergency Response to Regional Office Directors, April 30, 1997.
  6. "Procedures For Partial Deletions at NPL Sites," Memorandum from the Director, RCRA/CERCLA Division, Office of Environmental Policy and Assistance, January 29, 1997.
  7. "Guidance for Evaluation of Federal Agency Demonstrations that Remedial Actions are Operating Properly and Successfully Under CERCLA Section 120(h)(3)," U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, August 1996. URL <http://www.epa.gov/swerfrr/doc/896mm.htm>
  8. "Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List," U.S. Environmental Protection Agency, 60 FR 55465, November 1, 1995.
  9. "The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities," U.S. Environmental Protection Agency, 60 FR 14641, March 20, 1995. URL <http://www.epa.gov/docs/fedrgstr/EPA-WASTE/1995/March/Day-20/pr-174.html>
  10. "Close Out Procedures for National Priorities List Sites," U.S. Environmental Protection Agency, EPA540-R-98-016, January 2000 <http://www.epa.gov/superfund/resources/closeout/index.htm>.

**Note:** Information on deferral of sites from the NPL is found in References #4 and #9.

## **When in the CERCLA process should sites be considered for deletion or deferral from the NPL?**

Deletion, partial deletion, and deferral are options available to Project Managers for removing DOE sites from the CERCLA National Priorities List (NPL). Deletion and partial deletion are triggered when *no further response* is necessary (i.e., completion of all removal and remedial actions at the site). Operation and Maintenance (O&M) is not defined as a response by the NCP, therefore, EPA can consider a site in O&M for deletion.

Deferral is used when another statutory or regulatory authority (other than CERCLA) is available to complete the necessary cleanup.

After listing on the NPL, a site typically undergoes a remedial investigation (RI) and feasibility study (FS). The data from this process leads to remedy selection, which is documented in a “Record of Decision” (ROD). A ROD is followed by design of the selected remedy and its implementation through a remedial action. The deletion process begins at most sites once completion of the remedial action specified in the ROD is achieved.

## **What are the EPA’s criteria for deleting a site from the NPL?**

40 CFR 300.425(e) of the NCP describes how EPA may delete sites from the NPL when EPA determines that *no further response* is appropriate under CERCLA. Private sector sites must satisfy one of the following criteria to be eligible for site deletion:

- the responsible or other parties (i.e., DOE at its sites) have implemented all appropriate and required response actions;
- all appropriate Fund-financed responses under CERCLA have been implemented and no further response action is required (applies to private sector sites only); **or**
- the release of hazardous substances poses no significant threat to the public health, welfare, or the environment, thereby eliminating the need for remedial action.

At sites with ground and surface water restoration remedies, cleanup goals must be attained before EPA will consider the site for deletion.

## **Are the same criteria applicable for deletion of Federal sites?**

The criteria that Federal facilities must meet differ slightly from those of private sector facilities. A Federal facility must demonstrate that either it has “implemented all appropriate and required response actions,” or “the release of hazardous substances poses no significant threat to the public health, welfare, or the environment, thereby eliminating the need for remedial action.” (The Fund-financed criterion, the middle bullet above, does not apply because Federal facilities do not undergo Fund-financed response).

## **What is the process to delete a Federal facility site from the NPL?**

40 CFR 300.425(e) describes the steps and EPA’s role in this process. The steps to implement this regulation for DOE are outlined in a January 1997, EH-41 memorandum (see Ref #5). The deletion process includes the following three steps: (1) process initiation, (2) publication of the Notice of Intent to Delete (NOID), and (3) the Responsiveness Summary.

Where DOE is the lead (response) agency for the site, the DOE Environmental Restoration Program Manager (ERPM) can initiate the process by making a request to the EPA Regional Office. If the DOE site meets one of the deletion criteria, the EPA Regional Office then recommends the deletion and prepares the relevant documents with assistance from the DOE-ERPM. The DOE-ERPM will also need to ensure that there are no additional documentation or implementation requirements in any applicable Federal Facilities Agreements.

Next, EPA contacts the State to obtain its concurrence with the deletion proposal. Following State concurrence, EPA prepares a “Notice of Intent to Delete”(NOID) and publishes it in both the Federal Register and a newspaper of record. EPA makes all relevant documents available to the public and initiates a 30-day public comment period on the date of publication of the notice.

Finally, after public comment is taken, EPA evaluates the comments and issues a “Responsiveness Summary.” If EPA determines that deletion is appropriate, EPA completes the deletion process by publishing a final notice of deletion in the Federal Register. (For a detailed explanation of this process see Ref #10.)

### **What are the EPA's criteria and procedures for partial deletion of sites from the NPL?**

EPA's policies for partial deletion of sites from the NPL are set out in 40 CFR 300.425(e). In a November 1995 Federal Register Notice (60 FR 55465, November 1, 1995), EPA indicated that partial deletion is appropriate to consider when no further response is appropriate for a *portion* of the site. Total cleanup may take many years, while a portion of the site could be available for productive use. Such a portion may be defined as a geographic unit, perhaps as small as a residential unit, or a specific medium such as groundwater, depending on the nature and extent of the release.

The criteria and procedures for deletion of a site are similar as those for complete deletion. However, there are two important differences. First, in order to accurately identify the part of the site to be deleted, information about the area must be accurately *mapped*. This will delineate the portion of the site to be deleted and will foster a clearer public understanding of exactly what properties will no longer be part of the NPL.

Second, with a full deletion DOE prepares a Final Close Out Report, but with a partial deletion this document cannot be prepared so another document must be substituted. Documents that can be used for partial deletion include: Remedial Action Reports, No Action RODs, ROD Amendments, Final Pollution Reports, or even a memo to the file. Depending on the site, this document can be used as the basis for partially deleting a portion of the site and will be part of the partial deletion docket. (For a detailed explanation of this process see Ref #10.)

### **Are the same criteria for partial deletion applicable to Federal sites?**

A 1995 EPA Federal Register notice (60 FR 55465, November 1, 1995) allowed Federal facility sites also to take advantage of the option to partially delete sites. In this notice, EPA established that the procedures for partial deletion of Federal facility sites are the same as those for private sector sites, but, again, only two of the criteria are applicable. (The criterion, "all appropriate Fund-financed responses under CERCLA have been implemented and no further response action is required," does not apply to a Federal facility).

### **Have any deletions or partial deletions been made at Federal facilities?**

Yes, using the November 1, 1995 Partial Deletion policy as its basis, the Hanford 100 Area site operable units 100-IU-1 and 100-IU-3, were deleted from the NPL on July 8, 1998.

### **Can Federal site ownership be transferred to a private sector owner before deletion or partial deletion from the NPL?**

Before a site or portion of a site listed on the NPL is deleted, DOE may decide to transfer site ownership to a private sector owner. CERCLA section 120(h)(3) outlines the criteria and procedure for such a transfer. Even if cleanup objectives have not been met, the site still may be transferred if DOE demonstrates that the ongoing remedial action is "operating properly and successfully." According to the August 1996 EPA guidance document (see Ref #7), this means that the remedy must be operating as designed and be protective of human health and the environment. The EPA Regional Administrator will then evaluate the DOE's position based on the following criteria: risk to public health and environment; enforceability; technology reliability; and site characterization. Following this evaluation, the EPA Regional Administrator will issue a letter to the DOE facility detailing the EPA's position and the rationale behind it. If a transfer is allowed, DOE is responsible for all current remedial action as well as any additional remedial action found to be necessary after the date of transfer.

### **Other than deletion or partial deletion, can deferral be the basis for removal from the NPL?**

Yes, "deferral" of NPL sites refers to one of two processes that EPA allows when cleanup could be conducted by another remediation authority. First, sites can be deferred from *initial* listing on the NPL if another remediation authority is available under which DOE could conduct site cleanup. Second, sites can be deleted from the NPL by being deferred to another remediation authority *before* cleanup is complete. In establishing these options, EPA has indicated that its intention in implementing deferral policies was to free CERCLA's oversight resources for use in situations where another authority was not available, as well as to avoid possible duplication of effort and the need for an owner/operator to follow more than one set of regulatory procedures. Eliminating regulation under two separate authorities (i.e., CERCLA and the Resource Conservation and Recovery Act (RCRA)) would also eliminate public and owner/operator confusion over which authority has primacy.

### **What is the Criteria for Deletion by Deferral Before Sites are Listed on the NPL?**

EPA initially did not allow Federal sites to be deferred from listing on the NPL if site remediation was being conducted by other cleanup authorities. However, through modification of Section 120(d) of CERCLA, the FY97 Defense Authorization Act made deferral

from initial listing possible for Federal sites. A November 1997 Federal Register Notice (62 FR 62523, November 24, 1997) lists the criteria for site deferral. Federal and private sector sites must satisfy **all** of the following criteria to be eligible for deferral from listing on the NPL:

- the CERCLA site (i.e., DOE site) is currently being addressed by RCRA Subtitle C corrective action authorities under an existing enforceable order or permit;
- the response under RCRA is progressing adequately; **and**
- the state and community support deferral of the NPL listing.

### **What is the Criteria for Deletion by Deferral for Listed Sites?**

A March 20, 1995 EPA policy allowed already listed sites to be deleted from the NPL and remediated under another authority (see Ref #9). That policy made clear that this option is available for both private and Federal sites. The criteria that sites must meet for deferral to another remediation program (60 FR 14641, March 20, 1995) includes **all** of the following:

- if evaluated under current RCRA/NPL deferral policies, the DOE site would be eligible for deferral; (Sites generally will not be eligible for deletion from the NPL based upon deferral to RCRA corrective action if similar sites would not be deferred from listing on the NPL);
- the CERCLA site (i.e., DOE site) is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit;
- response under RCRA is progressing adequately; **and**
- deletion would not disrupt an ongoing CERCLA response action.

### **What is the process for deleting a site by Deferral?**

Deletion of a site from the NPL as a result of deferral is done by following the same procedures as for other deletion activities. The process of deletion by deferral is described in a March 1995 Federal Register notice (60 FR 14641, March 20, 1995). A petition from a party outside the EPA (i.e., DOE) or a unilateral action

from EPA begins the process. DOE petitions EPA for deletion by deferral and then must demonstrate that the site has met the four criteria listed above to the satisfaction of EPA. In addition, the state in which the release occurred must concur with the validity of the petition. If necessary, EPA may request additional information from DOE before making a decision. As with any deletion, a decision to delete a site based upon deferral to RCRA would be made only after EPA publishes a “Notice of Intent to Delete” in both the Federal Register and a newspaper of record before public comment is taken.

### **Have any deletions been made as a result of deferral at Federal facilities?**

Yes, Pantex petitioned to be deleted from the NPL and that authority for remaining remediation activities be given to the Texas Natural Resource Conservation Commission under RCRA Subtitle C authorities. EPA has indicated that it must meet the deletion criteria and receive State concurrence, as well as solicit public input through the Federal Register notice and comment process before any deletion could occur.

### **Other Information Resources**

- EPA’s RCRA/Superfund Hotline  
(800) 424-9346
- USDOE/ Office of Environmental Policy and Guidance (EH-41) Web Page  
<http://tis.eh.doe.gov/oepe>
- National Technical Information Service  
(703) 487-4650 <http://www.ntis.gov>

Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this information brief to Jerry DiCerbo, RCRA/CERCLA Division, EH-413, (202) 586-5047.

